IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 12TH JANUARY 2007 / 22ND PAUSHA 1928

OP.No. 3587 of 2003(B)

PETITIONER:

K.P.MOHAMED ALI HAJI, PROPRIETOR,
K.P.M. RESIDENCY, K.P.M. ARCADE, MANNARCAUD ROAD,
PERINTHALMANNA P.O., MALAPPURAM DISTRICT.

BY ADV. SRI.K.P.DANDAPANI

RESPONDENTS:

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1. THE UNION OF INDIA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
MINISTRY OF LABOUR, NEW DELHI.

2. THE STATE OF KERALA,
REP. BY THE SECRETARY TO GOVERNMENT,
LABOUR DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

3. THE DISTRICT LABOUR OFFICER &
ASSESSMENT OFFICER (BUILDING OTHER CONSTRUCTION
WORKERS CESS), MALAPPURAM.

BY GOVERNMENT PLEADER SRI NOBLE MATHEW.
SRI. AJITH KRISHNAN, ADDL.CGSC
SRI. JOHN VARGHESE, ASG

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 12/01/2007, THE COURT ON THE SAME DAY, DELIVERED THE FOLLOWING:

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF NOTICE DT. 21-1-2002.

EXT.P2 COVERING LETTER DT. 28-1-2002.

EXT.P3 COVERING LETTER DT. 16-5-2002.

EXT.P4 ASESSMENT ORDER DT. 12-6-2002.

EXT.P5 OBJECTION DT. 1-7-2002.

EXT.P6 NOTICE DT. 19-9-2002.

EXT.P7 REPRESENTATION DT. 24-9-2002.

EXT.P8 ORDER DT. 13-11-2002.

[TRUE COPY]

P.S TO JUDGE.

S. Siri Jagan, J.

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O.P. No. 3587 of 2003

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Dated this, the 12th January, 2007.

J U D G M E N T

In this original petition, the petitioner is challenging the constitutional validity of the building and other Construction Workers Welfare Fund Cess Act, 1996. It is brought to my notice that a similar original petition, namely, O.P.No. 2451/2003, has been disposed of by a learned Judge of this Court. That judgment has been made available to me for perusal. The same reads as follows:

> "The writ petition is filed mainly with the following prayers:
>
> (i) Issue a writ of certiorari or any other writ, order or direction in the nature of certiorari and quash Ext. P2 series assessment orders;
>
> (ii) Issue a declaration that the petitioners are not in any case liable to file returns and to pay the cess as directed by the third respondent.
>
> It is for the petitioners or the 4th respondent to pursue their ordinary remedy of appeal under Section 11 of Act 28 of 1996. In the event of the appeals being filed within two months from today, they shall be treated to have been filed in time and thereafter, the appellate authority shall dispose of the same with notice to the appellants/respective owners of the building and the 4th respondent builder, within another four months. There shall be no recovery till such time.
>
> The writ petition is disposed of as above."

In view of the same, I feel that it is only proper that I also dispose of this original petition with identical directions.

2. Accordingly, I permit the petitioner to file an appeal against the impugned orders within two months from today. If the same is so filed, that shall be treated as filed within time and the appellate authority shall dispose of the same on merits with notice to the petitioner within another four months. Till the appeal is disposed of, no coercive steps shall be taken to recover the amounts as per the impugned orders. I further make it clear that this would be without prejudice to the right of the petitioner to take up his challenge against

the constitutional validity of the Act itself, if, ultimately, the appellate order is against the petitioner. The original petition is disposed of as above.

Sd/- S. Siri Jagan, Judge.

Tds/